

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



75-6094

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Libellant

v.

ONE 1975 CADILLAC ELDORADO COUPE  
NEW YORK STATE REGISTRATION  
560-EVN, REGISTERED TO TOMMIE  
KENNETH SAUNDERS,

Libellee

Docket No. 75-6094

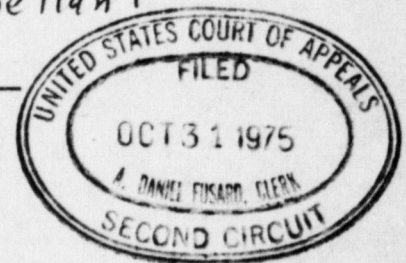
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APPENDIX OF LIBELLE - *Appellant*

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JOEL L. DANIELS, ESQ.  
Attorney for Libellee  
Office & P. O. Address  
1370 Statler Hilton  
Buffalo, New York 14202  
716-856-5140

SALTEN RODENBERG, ESQ.,  
of Counsel



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TABLE OF CONTENTS

	Page
Decision and Order of Court Below.....	A-1
Docket Entries.....	A-8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Libellant

-vs-

Civ-75-124

ONE 1975 CADILLAC ELDORADO COUPE,  
NEW YORK STATE REGISTRATION 560-EVN,  
REGISTERED TO TOMMIE KENNETH SAUNDERS,

Libellee

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APPEARANCES: RICHARD J. ARCARA, ESQ.  
United States Attorney  
(JAMES A. FRONK, ESQ., of Counsel)  
Buffalo, New York, for the Government.

JOEL L. DANIELS, ESQ.  
Buffalo, New York, for Libellee.

The subject of this libel action is a 1975 Cadillac Eldorado automobile valued in excess of \$10,000, which was seized by Secret Service Agents on March 14, 1975 under the authority of 49 U.S.C. §§781 and 782. The government contends the vehicle was used to facilitate the transportation and sale of counterfeit monies. A trial was held on May 2, 1975 and the court has considered the briefs supplied by the parties. The facts in this matter may be related briefly.



The owner of the vehicle, who is also under criminal indictment, is Tommie Kenneth Saunders, a resident of Buffalo, New York. On March 4, 1975, Secret Service Agent Robert Pochopin, acting in an undercover capacity, purchased a quantity of \$10 counterfeit Federal Reserve notes from Mr. Saunders. After that purchase, the agent talked to Saunders about buying some more counterfeit money. As a result of several telephone calls, a meeting was arranged for March 14, 1975 at the Major Brands gas station located at 1625 Fillmore Avenue in Buffalo, operated by Saunders and Julius Blazer. Saunders telephoned Pochopin on that day and arranged to meet him at the station at about 4:30 p.m. so that Saunders could sell \$3,000 in counterfeit \$10 bills to the agent for \$1500. Other agents took up surveillance posts in the vicinity. They observed Saunders drive away from the station at about 4:00 p.m. in a white 1975 Cadillac Eldorado, which is now the subject of this lawsuit. Agent Patrick Finnerty followed the Cadillac from the station to Saunders' residence on Oakgrove Street, two or three miles away. Saunders was accompanied on the trip from the station to

Oakgrove by his partner. According to Blazer's testimony, it was a daily routine to drive to the Major Brands office at about 4:00 p.m. to drop off the proceeds. The weather on that afternoon was especially bad. It was windy, snowing heavily and the streets were very slippery. Blazer testified that because of the bad conditions, they drove to Oakgrove to pick up an older vehicle, rather than drive the Cadillac to the Major Brands office. However, upon arriving, they found the other vehicle was in use and not available. Saunders went up to his house briefly, ostensibly to open the door for his son who had returned from school. He denies entering the house, and Agent Finnerty was not at a vantage point to see. Blazer went into the home of a friend who lived across the street. Blazer testified that he called the Major Brands office and left a message that, because of the bad weather, they could not bring the records in that day but would do so the next day. Saunders drove across the street, picked up Blazer and returned to the station. When Saunders returned to the gas station, he parked a few feet to the north of



the building. At this time Agent Pochopin was parked in the station area to the south. He testified that Saunders got out of the Cadillac and proceeded directly across the open station area to his vehicle, with an object in his hand as he crossed this area toward the agent's car. He entered Pochopin's car, opened a newspaper in which the counterfeit \$10 notes were contained, and delivered them to the agent. The movement of Saunders was confirmed by the other agents in the area. The witness for Saunders testified that when he got out of his car, he entered the station briefly and then walked to the agent's automobile. The surveilling agents were all in good position to observe the activities at the station and the court credits their testimony. A prearranged signal was given, Saunders was arrested and his Cadillac was seized pursuant to 49 U.S.C. §§781 and 782.

Relying on 49 U.S.C. §§781 et seq., the United States seeks a decree of condemnation and forfeiture of the automobile which is the subject of this suit. The libellee argues that, even accepting the facts in the light



most favorable to the government, since the use of the vehicle was only incidental to the success of the transaction it is not subject to seizure, citing United States v. 1971 Chevrolet Corvette, 496 F.2d 210 (5th Cir. 1974). In that case, the vehicle was used for only a five-block trip to the place where the owner picked up another, which was driven to the rendezvous point to pick up the contraband material. In this case, the Cadillac was used to actually transport the counterfeit funds. In fact, the discussion in the 1971 Chevrolet case supports the government's position. The court stated there:

. . . It is commonly stated that any use of an automobile that "makes easy or less difficult" or "lessens the labor of" the handling of contraband constitutes facilitation within the meaning of section 781.

496 F.2d at 212.

Assuming it was the intent of Saunders to use his vehicle to transport the counterfeit money and to take the day's receipts to his employer, nevertheless, its use facilitated the transport of the counterfeit funds. He had the money in his possession when he drove up to the station. It is immaterial whether he drove to his home,


picked up the counterfeit money there, or got it from Blazer after Blazer went into the house, or had the money in his possession from the time he originally left the station. Assuming any of these alternatives, the Cadillac was used to meet with the agent at the time of appointment.

Citing United States v. McCormack, 502 F.2d 201 (9th Cir. 1974), the libellee argues that the vehicle could not be seized without a search warrant. In McCormack, a vehicle was seized without a warrant based upon probable cause that the vehicle was being used to transport contraband. After the seizure, certain evidence was discovered during the search of the vehicle. It was this evidence which the Court of Appeals suppressed in the McCormack case. We are not concerned with the right of the agents to search the vehicle after seizure. The issue in this case is whether a vehicle may be subject to seizure after a judicial hearing in which it is determined that the vehicle was used to facilitate the transportation of contraband and whether, at the time of the original seizure, the agents had cause to believe that the vehicle had been used for this purpose. Considering



the evidence presented in this case, there is no doubt that Mr. Saunders used the Cadillac to transport the counterfeit money to make his appointed sale to the Secret Service agent. No doubt this is a disastrous financial blow to Mr. Saunders but, under the circumstances presented, there is no alternative but to grant the relief requested by the government. The United States Attorney shall prepare an appropriate decree of condemnation and forfeiture.

So ordered.

  
JOHN T. CURTIN  
United States District Judge

DATED: August 5, 1975

DATE 1975	NR.	PROCEEDINGS
Apr. 3	3	Filed complaint.
3	3	Issued Warrant of Seizure and Monition & 5 copies - ret. 4-28-75
3	3	J.S. 5 made
15	15	Filed Mar. ret. on libel served on Tommie K. Saunders on 4-8-75
28	28	Filed defts. answer to Govts. libel of information.
28	28	Ret. of libel. Deft. to file answer today.
May 2	2	Hearing re application for ret. of automobile. Briefs are to be filed by 5-19-75.adj. to 5-27-75 adj. to 6-2-75
28	28	Filed defts. memorandum of law.
June 2	2	Ret. date for Govts. brief adj. to 6-9-75 To be filed today.
12	12	Filed Pltfs. memorandum of law.
23	23	Status Report. Govt. advises Ct. briefs have been filed.
27	27	Filed defts. memorandum of law in reply to govts. brief.
Aug. 5	5	" decision & order directing the U.S. Atty. to prepare an F-167 appropriate decree of condemnation & forfeiture-Curtin, DJ
13	13	" Notice & copies to U.S. Atty. & Joel L. Daniels, F-167 final decree of condemnation that the property mentioned and described in this suit is condemned as forfeited to the use of the U.S.-Curtin, DJ Notice to U.S. Atty. & Joel Daniels
13	13	JS 6 made
22	22	Filed Libellee's Notice of Appeal (copy mailed to U.S. Atty. and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Daniels)
Sept. 19	19	Original papers, exhibits, docket entries and Clerk's certificate mailed to Clerk, CCA
Oct. 2	2	Filed Transcript of trial held 5-2-75
2	2	Transcript, supplemental docket entry and supplemental Clerk's certificate mailed to Clerk, CCA

A-9

CLOSED

H. J. Daniels







DISTRICT	CL	YR.	NUMBER	MO.	DAY	YEAR	J	N/S	O	R	23	\$	OTHER	NUMBER	DEM.	YR.	NUMBER
209	1	75	0124	04	03	75	1	690	1				1975 Cadillac	0905		75	0124

PLAINTIFFS

U.S.A

DEFENDANTS

One 1975 Cadillac Eldorado  
Coupe, New York State  
Registration 560-EVN, Registered  
to Tommie Kenneth Saunders

CAUSE

T.49, Sec. 7810778, T. 19 Sect. 1610  
U.S. seeks forfeiture of vehicle used  
to transport contraband

pah

ATTORNEYS

United States Attorney

Joel Daniels, Esq.  
1370 Statler Hilton  
Buffalo, New York 14202

A-8

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	





